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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,013	01/09/2007	Anja Schwogler	5000-0148PUS1	3742

2292 7590 08/31/2007  
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EXAMINER	
RAO, DEEPAK R	

ART UNIT	PAPER NUMBER
1624	

NOTIFICATION DATE	DELIVERY MODE
08/31/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/564,013	SCHWOGLER ET AL.	
	Examiner	Art Unit	
	Deepak Rao	1624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060110</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-14 are pending in this application.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

1. In claim 1, in the definition of  $R^1$  and  $R^2$ , the recitations are not in the alternative. The claim first recites that " $R^1$ ,  $R^2$  independently of one another are  $C_1$ - $C_6$ -alkyl, .....", followed by " $R^2$  may additionally be hydrogen;" and " $R^1$  and  $R^2$  may also, together with the nitrogen ....", wherein the second and third recitations should be separated by -- or -- to have the different definitions of the same variable(s) in the alternative.
2. In claim 1, in the definition of X, the term " $-C=C-(C=O)-$ " has two carbon atoms having open valency and it is not clear what is intended to be substituted on these carbon atoms.
3. In claim 6, in the recitation of the last two lines -- "... in the presence of a base and of hydrogen peroxide" the term ' of ' is redundant. The claim reads better if written as -- in the presence of a base and of hydrogen peroxide --.
4. Claim 8 is drawn to "An ester of the formula V" and depends from claim 1 which is drawn to 'a 2-substituted pyrimidine of formula I'. The compounds of formula I do not include an ester substituent at the 2-position (as found in formula V) and therefore, claim

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- 8 drawn to compound of formula V is improperly dependent on claim 1. The compounds recited in claim 1 do not include the compounds of formula V. The rejection may be overcome by rewriting the claim in independent form.
5. In claim 10, line 1, it is recited "An imine halide of the formula **IV**", followed by the structural formula VI. The term "formula IV" in line 1 should be amended to recite "formula ~~IV~~ VI".
6. Claim 10 is drawn to "An imine halide of the formula IV" (wherein the term IV should be VI) and depends from claim 1 which is drawn to 'a 2-substituted pyrimidine of formula I'. The compounds of formula I do not include an imine halide substituent at the 2-position (as found in formula VI) and therefore, claim 10 drawn to compound of formula VI is improperly dependent on claim 1. The compounds recited in claim 1 do not include the compounds of formula VI. The rejection may be overcome by rewriting the claim in independent form.

***Allowable Subject Matter***

Claims 1-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The closest prior art of record, WO 03/043993 teaches 2-substituted-5-phenylpyrimidine compounds which generically include a 2-position substituent of  $-(C=O)-NR^aR^b$ . The reference, however, does not disclose or expressly teach any compounds with the above substituent group. Further, applicant provided comparative data in the specification comparing the compounds according to instant invention

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with the compound of Example I-186 of the reference, showing improved protective activity against fungicidal infection, see the examples and the data provided in pages 64-65 of the specification.

Receipt is acknowledged of the Information Disclosure Statement filed on January 10, 2006 and a copy is enclosed herewith.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (571) 272-0672. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**/Deepak Rao/  
Primary Examiner  
Art Unit 1624**

August 23, 2007